

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 230, MS 2-10

SACRAMENTO, CA 95814

TDD 654-2054 (For the Hearing Impaired)

(916) 654-3695



April 6, 2009

Mr. Dennis Miras, Audit Supervisor
Department of General Services
Office of Audit Services
707 Third Street, Eighth Floor
West Sacramento, CA 95605

Dear Mr. Miras:

Final Audit Report – Department of Developmental Services
Contract Exemption Compliance Audit

Enclosed is the final audit report on the Department of Developmental Services (DDS) contracting procedures and related internal controls for the period July 1, 2006, to June 30, 2008. This review was conducted by DDS as required by Department of General Services Exemption Letter Number 8.4 dated March 31, 2005. The report includes the response submitted by the DDS's Contract Management Unit, which is included as Appendix A, and the evaluation of that response which is included on page 11 of the report.

If you have any questions regarding this report, please contact Edward Yan, Chief, Regional Center Audit Section, at (916) 654-1948.

Sincerely,

A black rectangular redaction box covering the signature of Arthur J. Lee.

ARTHUR J. LEE, CPA, Manager
Audit Branch

Enclosures

cc: Karyn Meyreles, DDS
Jean Johnson, DDS
Pamela Robison, DDS
Robert Ecklund, DDS
Edward Yan, DDS

"Building Partnerships, Supporting Choices"

DEPARTMENT OF DEVELOPMENTAL SERVICES

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April 6, 2009

Pamela Robison, Acting Chief
DDS Customer Support Services Section
1600 Ninth Street, Room 300, MS 3-18
Sacramento, CA 95814

Dear Ms. Robison:

The Department of Developmental Services (DDS) has completed the audit of the Customer Support Section, Contract Management Unit. All of the findings identified in the audit report were discussed with you during the formal exit conference held on March 3, 2009. We subsequently received your response to the draft report on April 6, 2009. Our final report is enclosed.

As noted in the final audit report, DDS requests that the Customer Support Services Section make the necessary adjustments to areas mentioned on the report.

If you have any questions regarding the report by the Audit Branch, please call Edward Yan, Chief, Regional Center Audit Section, at (916) 654-1948.

Sincerely,

A black rectangular box redacting the signature of Arthur J. Lee.

ARTHUR J. LEE, CPA, Manager
Audit Branch

Enclosures

cc: Karyn Meyreles, DDS
Jean Johnson, DDS
Robert Ecklund, DDS
Edward Yan, DDS

"Building Partnerships, Supporting Choices"



**AUDIT OF THE
CONTRACT PROGRAM
FOR THE PERIOD JULY 1, 2006 TO JUNE 30, 2008**

Department of Developmental Services

This report was prepared by the
California Department of Developmental Services
1600 Ninth Street
Sacramento, CA 95814

Karyn Meyreles, Acting Deputy Director, Administration Division
Arthur J. Lee, CPA, Manager, Audit Branch
Edward Yan, Chief of Regional Center Audits, Audit Branch

Audit Staff: Mubashshir Ahmad and Soi Ly

For more information, please call: (916) 654-3695

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EXECUTIVE SUMMARY

The Department of Developmental Services' (DDS) Audit Branch has audited DDS's Contract Management Unit (CMU) for the time period of July 1, 2006 through June 30, 2008.

The results of the audit disclosed the following findings of noncompliance:

Finding 1: Negative Evaluations

The 40 sampled contracts included six consultant contracts which were reviewed to determine whether DDS requested negative evaluations from DGS. It was found that DDS did not maintain any documentation to show requests were made to DGS for any negative evaluations for three of the six consultant contracts. In addition, no documentation was maintained to show that DGS responded to any requests for negative evaluations. This is not in compliance with the State Contracting Manual, Section 3.02.3(A).

Finding 2: No Post Evaluation

Within the 40 contracts sampled, six were consultant contracts. From the six consultant contracts, it was found that four contracts were over the 60 day completion mark of the contract and that all four consultant contracts had no post evaluation. This is not in compliance with the State Contracting Manual, Section 3.02.5(A).

Finding 3: Contracts Approved Late (Repeat)

The review of the 40 sampled contracts revealed that two contracts were found to have been approved after the effective date. All contracts should be approved prior to the effective date of the contract. This is not in compliance with DGS's General Terms and Conditions 306 and 1005.

Finding 4: Services Provided Prior to Contract Approval (Repeat)

A review of the first payment invoices for each of the 40 sampled contracts found that for two contracts, services were provided before the contracts were approved. Since the contracts are not valid until it has been approved, services should not have been provided prior to the approval date. This is not in compliance with the State Contracting Manual, Section 4.09(A) and DGS's General Terms and Conditions 306 and 1005.

BACKGROUND

In order to reduce administrative costs and in the interest of reducing the time it takes to enter into agreements, the Department of Developmental Services (DDS) requested an exemption from the requirement that approval be obtained from the Department of General Services' (DGS) Office of Legal Services (OLS) for DDS's contracts. DGS granted DDS the exemption for certain contracts. The exemption is renewed every four years. During the period under audit, one exemption letter was in effect; Exemption Letter 8.4, which is effective from April 1, 2005 through March 31, 2009. One requirement for maintaining the exemption is that DDS must ensure that an audit is conducted to determine if DDS's Customer Support Section, Contract Management Unit (CMU) is complying with the Public Contract Code (PCC) and with DGS's conditions for maintaining the exemption. The exemption granted by DGS gives DDS an exemption for the following contracts:

- Pursuant to PCC Section 10351, contracts under \$75,000 are subject to approval from DGS per PCC Section 10335 and
- Interagency Agreements under \$75,000 per Government Code Section 11256.

OBJECTIVE, SCOPE, AND METHODOLOGY

This required audit was conducted to determine if DDS complied with the requirements of DGS's Exemption Letter 8.4 for the period of April 1, 2005 through March 31, 2009.

The audit was conducted in accordance with the Standards for the Professional Practice of Internal Auditing. These standards require that audits be planned and performed to obtain reasonable assurance that the objective of the audit is met. The audit considered the relevant aspects of the internal control structure to determine if the system is sufficient to provide reasonable assurance of compliance with contracting laws and policies. Pursuant to PCC Section 10351, a State agency must meet the following to obtain an exemption approval of its contracts from DGS's OLS:

- A designated agency officer who is responsible and directly accountable for the agency's contracting program.
- Established written policies and procedures and a management system that will ensure the agency's contracting activities comply with applicable provisions of law and regulations. A demonstrated ability to carry out these policies and procedures and to implement the management system.
- A plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.
- An audit of the contracting program every two years and a written report to DGS as required.
- Procedures for reporting to DGS and the Legislature on such contracts as the Legislature may require in the Budget Act.
- An internal control structure is in place to ensure the effectiveness and efficiency of operations, reliability of reporting, and compliance with applicable laws and regulations.

The criteria used for this review was DGS's "Contracting Program Audit Guide," State Contracting Manual, State Administrative Manual, State Cal Card Agreement, and the PCC. The Audit Guide must be used when an audit is required as a condition for an exemption approval of an agency's contracts from DGS's OLS.

The objectives of this audit as specified in DGS's Contracting Program Audit Guide are:

- To determine whether the contracting program is complying with the legal requirements for exemption, specifically as to the oversight of all awarded contracts subject to exemption,
- To determine and document the system of internal controls.

- To determine whether the contracting system, if followed, can be reasonably relied upon to provide adequate internal controls and produce contracts in accordance with law, State policies, and the best interests of the State.
- To test the effectiveness of the internal controls through evaluation of a sample of contracts awarded since the prior audit.
- To determine whether appropriate corrective actions have been implemented in response to previous audit findings.

The scope of this audit is specified in DGS's Contracting Program Audit Guide. The Audit Guide requires that the scope of the audit include, but not be limited to, the following:

- Per PCC Section 10351, a limited review of the internal controls over the contracting laws and policies to gain reasonable assurance of compliance with applicable laws and regulations.
- Review of a selection of contracts, including interagency agreements, to ensure compliance with DGS's contracting procedures and requirements.
- Review of supporting documentation to ensure timely payment and compliance with applicable payment requirements.

The procedures performed for this audit included, but were not limited to, the following:

- The procedures used by CMU were reviewed. A self-survey was completed by CMU and reviewed by the auditor. An organization chart was also provided and reviewed. Follow-up discussions were conducted to obtain clarification of procedures as needed.
- A sample of 40 contracts was selected. This sample included contracts of various dollar amounts, contracts from developmental centers and DDS headquarters, and a variety of contractors and contract types.
- The sampled contracts were reviewed for the entire contracting process. Each contract was reviewed for compliance to the applicable laws and regulations. This review included: the contract request, bidding process (when applicable), awarding of the contract, contract transmittal, contract terms, and funding for the contract.
- The first invoice for each contract was examined to determine if the services provided were consistent with the services in the contract and to verify that the payment is consistent with the payment provision of the contract.
- For the contracts in the audit sample that were identified as not subject to approval by DGS's OLS, the contracts were reviewed to verify the basis for exemption and that the contract was stamped "exempt."

- For the contracts in the audit sample that were submitted to DGS for approval, the contracts were reviewed to verify that the contracts were stamped “approved” and that amendments were submitted to DGS for approval, as required. The effectiveness of controls for timely submission of contracts to DGS for approval was also evaluated.
- For the contracts in the audit sample that were identified as meeting the criteria for DDS delegated approval, the contracts were examined to determine whether the contracts complied with general contracting criteria, as required by DGS. These general contracting criteria are contained in DGS’s Contracting Program Audit Guide, which was used for this examination.
- The contracts in the audit sample included two contracts that contained purchases under a Master Service Agreement (MSA). These contracts were reviewed to determine whether it included MSA rates and the scope was consistent with MSA.
- The contracts in the audit sample included seven interagency agreements. These agreements were reviewed to determine if DGS’s approval was obtained for the agreements that exceeded the delegation amount. The agreements were reviewed to ensure it contained the required financial control, Bureau of State Audit, and competitive bidding language. In addition, the agreements were examined to determine if it was used to circumvent contracting requirements.

In addition to the 40 contracts sampled,

- The small dollar value contracts for fiscal years 2006-07 and 2007-08 were reviewed to determine if contracts were being split to circumvent applicable contracting criteria and to verify that it met the criteria for issuing a service order.
- Two Cal Card holders were selected from DDS headquarters and from each of the Developmental Centers to review Cal Card purchases made in December 2005, January and December 2006, and January 2007. Invoices and backup documents were examined to determine if any of the services purchased with the Cal Cards were prohibited by DDS’s Cal Card Handbook. The purchases on the Cal Card statements were reviewed for evidence of splitting payments to circumvent purchase regulations and policies.

In addition, payments made on the Cal Card invoices were reviewed to determine if payment was made within 45 days of the invoice date, as required under the guidelines for the Cal Card Program.

- All audit findings that were identified in the prior DDS audit of the Contract Program were reviewed to determine the degree and completeness of corrective actions taken. The prior audit contained five findings. From the review of these prior findings, two of the findings were not fully resolved and are reported as repeat findings in the Findings and Recommendations section. (See Findings 3 and 4)

CONCLUSION

Based upon the procedures performed, we have determined that, except for the items identified in the Findings and Recommendations section, CMU has complied with the applicable laws and regulations as identified in DGS's Contracting Program Audit Guide for the review period of July 1, 2006 through June 30, 2008.

Errors or irregularities may still occur and remain undetected due to inherent limitations in any internal control structure. Furthermore, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate due to changes in conditions, diminished design effectiveness, or deterioration of policies and procedures. Based upon the procedures performed, there were no conditions identified that would constitute a significant deficiency in the design or operations of the internal control structure. However, our consideration of the internal control structure was limited and would not necessarily disclose all conditions.

VIEWS OF RESPONSIBLE OFFICIALS

DDS issued a draft audit report on February 25, 2009. The findings in the report were discussed at an exit conference with DDS's Contract Management Unit on March 3, 2009. At the exit conference, we stated that the final report will incorporate the views of responsible officials.

RESTRICTED USE

This report is solely for the information and use of the Department of Developmental Services and the Department of General Services. It is not intended and should not be used by anyone other than those specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

ARTHUR J. LEE, CPA, Manager
Audit Branch

FINDINGS AND RECOMMENDATIONS

Finding 1: Negative Evaluations

The 40 sampled contracts included six consultant contracts which were reviewed to determine whether DDS requested negative evaluations from DGS. It was found that DDS did not maintain any documentation to show requests were made to DGS for any negative evaluations for three of the six consultant contracts. In addition, no documentation was maintained to show that DGS responded to any requests for negative evaluations. (See Attachment A)

State Contracting Manual, Section 3.02.3(A) states:

“Before awarding a consulting services contract, of \$5,000 or more, an agency must request a copy of any negative evaluations from DGS/OLS.”

Recommendation:

CMU should develop and implement procedures to ensure that documentation is maintained on file to demonstrate that requests are made to DGS for negative evaluations for all consultant contracts of \$5,000 or more. The documentation should include the DGS responses to the requests for negative evaluations.

Finding 2: No Post Evaluation

The review of the 40 sampled contracts revealed that six were for consultants. These six consultant contracts were reviewed to determine whether DDS was performing and completing the Contract/Contractor Evaluation form for post evaluation of the contractors' performance within 60 days of the completion of the contract. It was found that four consultant contracts were over the 60 day completion mark of the contract and that all four consultant contracts had no post evaluation. (See Attachment B)

State Contracting Manual, Section 3.02.5(A) states:

“One Contract/Contractor Evaluation, form STD 4, must be prepared within 60 days of the completion of the contract.”

Recommendation:

CMU should develop and implement policies and procedures to ensure that the Contract/Contractor Evaluation form STD 4 is prepared within 60 days of the completion of the contract.

Finding 3: Contracts Approved Late (Repeat)

The review of the 40 sampled contracts revealed that two contracts were found to have been approved after the effective date. Though the written contracts included the scope of services to be provided and the compensation that will be paid for the services, all contracts should be approved prior to the effective date of the contract. This issue was identified in the prior DDS contract audit. (See Attachment C)

DGS's, General Terms and Conditions 306 and 1005 states:

“Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractors may not commence performance until such approval has been obtained.”

Recommendation:

CMU staff should continue to work with its customers to ensure that contract requests are submitted with sufficient lead-time to meet DGS's contract time lines. In addition, CMU should continue review and monitor its procedures to determine if any improvements can be made to ensure contracts are processed within the DGS's time lines.

Finding 4: Services Provided Prior to Contract Approval (Repeat)

A review of the first payment invoices for each of the 40 sampled contracts was performed to verify that the work began after the contract was approved. It was found that for two contracts, services were provided before the contracts were approved. Since the contracts are not valid until it has been approved, services should not have been provided prior to the approval date. This was identified in the prior DDS contract audit. (See Attachment D)

State Contracting Manual, Section 4.09(A) states:

“The basic State policy is that no contractor should start work until receiving a copy of the formally approved contract”

Also, DGS's General Terms and Conditions 306 and 1005 states:

“Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractors may not commence performance until such approval has been obtained.”

Recommendation:

CMU should continue to monitor and ensure that the contract managers are aware of their responsibilities and clearly understand that services cannot be provided prior to the contract approval.

EVALUATION OF RESPONSE

As part of the audit report process, CMU is provided with a draft report and is requested to provide a response to each finding. CMU response dated March 16, 2009 is provided as Appendix A. This report includes the complete text of the findings in the Findings and Recommendation section and a summary of the findings in the Executive Summary section. DDS's Audit Branch has evaluated CMU's response. CMU's response addressed the audit findings and provided reasonable assurance that corrective action would be taken to resolve the issues. DDS's Audit Branch will confirm CMU's corrective actions identified in the response during the next scheduled audit.

Department of Developmental Services
Contract Management Unit
Negative Evaluations
Audit Period of July 1, 2006 to June 30, 2008

Contract Number			Contract Name	
1	HD069001			
2	HD069020			
3	HD069067			

Department of Developmental Services
Contract Management Unit
No Post Evaluation
Audit Period of July 1, 2006 to June 30, 2008

Contract Number			Contract Name	
1	HD069001			
2	HD069020			
3	HD069067			
4	HD079005			

Department of Developmental Services
Contract Management Unit
Contracts Approved Late
Audit Period July 1, 2006 to June 30, 2008

Contract Number			Contract Name	Contract Effective Date	Contract Approved Date
1	HD079033			7/1/2007	9/7/2007
2	CS079008			3/1/2008	3/7/2008

**Department of Developmental Services
Contract Management Unit
Services Provided Prior to Contract Approval
Audit Period July 1, 2006 to June 30, 2008**

Contract Number			Contract Name	Contract Approved Date	Date Services Provided
1	HD069067			8/15/2006	7/8/2006
2	CS079008			3/7/2008	3/1/2008

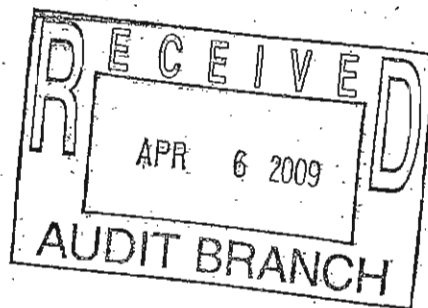
Memorandum

Date: March 16, 2009

To: Arthur J. Lee, CPA, Manager
Audit Branch
Room 230, MS 2-10

From: Customer Support Section

Subject: Draft Audit of DDS' Contracts Unit for the period of July 1, 2006 through June 30, 2008



Thank you for the opportunity to review and comment on the above draft audit report. The Customer Support Section (CSS), Contracts Management Unit (CMU)'s responses to each finding and recommendation in the draft report are as follows.

FINDING 1: Negative Evaluations Documentation for Consultants

Recommendation:

CMU should develop and implement procedures to ensure that documentation is maintained on file to demonstrate that requests are made to DGS for negative evaluations for all consultant contracts of \$5,000 or more. The documentation should include the responses to the requests for negative evaluations.

Response to Finding 1

DDS' contract analysts (experienced and new) are trained to check with DGS for any negative evaluations on file for consultants. The analysts were unaware that they needed to check negative evaluations of consultants when preparing a consulting contract with public entities. Updated contracting information has been given to all contract analysts either in person (Headquarters) or by e-mail (Developmental Centers and Community Facilities) instructing them to contact DGS/OLS for negative evaluations prior to executing a consulting contract with either private or public entities. Also, DDS' Contract Checklist will be revised to include checking for any negative evaluations as an item on it.

FINDING 2: No Post Evaluation

Recommendation:

CMU should develop and implement policies and procedures to ensure that the Contract/Contractor Evaluation Form STD 4 is prepared within 60 days of the completion of the contract.

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Response to Finding 2

DDS' contract analysts (experienced and new) are trained to remind all contract managers that they are required to complete contract evaluation form (STD 4) when a consulting contract is completed. Updated contracting information has been given to all contract analysts either in person (Headquarters) or by-email (Developmental Centers and Community Facilities) instructing them to continue educating the contract managers/program staff that they need to complete a STD 4 when the consulting contract is completed. A STD 4 will now accompany any executed consulting contract when it is forwarded to the contract manager/program staff. The contract analysts have been instructed to contact the contract manager/program staff if the STD 4 has not been received within 30 days of the completion of the contract.

FINDING 3: Contracts Approved after the Effective Date (Repeat)

Recommendation:

CMU should continue to work with its customers to ensure that contract requests are submitted with enough lead-time to meet DGS' contract timelines. In addition, CMU should continue to review and monitor its procedures to determine if any improvements can be made to ensure contracts are processed within DGS' timelines.

Response to Finding 3

CMU is continuing to review and refine the contract process to ensure contracts are processed in a timely manner and to meet contract timelines as required by DGS' Administrative Order (AO) 06-05.1. These efforts include the following:

1. The CMU meets on a bi-weekly basis to discuss the status/progress of headquarters contracts as well as any of the facilities' contracts that have been forwarded to DGS/OLS for approval. The manager of the unit meets individually with team members as needed to discuss immediate concerns. The manager and Headquarters analysts work with the Developmental Centers and Community Facilities' contracting staff to resolve any problems that they may have.
2. Contract analysts' assignments are organized by specific types of contracts in an effort to provide better service to programs.
3. Following a review of expiring contracts, a notice is sent to the contract managers informing them of their contract's expiration date with instructions for the renewal or amendment of the contract. Whenever possible, this notice is sent 3 -12 months prior to the expiration of the contract, depending on the type of contract.
4. If the contract manager informs the contract analyst that he/she plans to renew or amend his/her contract, a pre-contract meeting is scheduled. In this meeting the

contract analyst and contract manager/program staff meets to review the existing contract to determine if it can be amended or if a new contract is needed. They also review the process and develop a timeline to prepare the new contract or amendment.

5. Whenever necessary, the contract analyst consults with a member of DDS' Office of Legal Affairs as well as DDS' approving attorney at DGS/OLS.
6. If a new contract analyst is assigned to the contract renewal or amendment, the process is monitored by both the Lead Contract Analyst and the Manager of the CMU to ensure that it is not delayed.
7. With the implementation of AO 06-05.1 in July, 2006, DGS must receive any contract and/or amendment that need its approval a minimum of ten working days prior to the effective date of the contract and/or amendment. DDS contracting staff has been instructed to have the following language in the body of the STD 213: *Effective date of this contract is (date) or when approved by DGS whichever is later.* This language was provided to us by DGS/OLS.

Contract analysts are also required to indicate if the contract is an exception to the timeliness requirements of AO 06-05.1 in the Agreement Outline (Section # 9) of STD 215.

AO 06-05.1 also requires a late justification letter from the Department Director or Agency Secretary if the contract is submitted to DGS with fewer than ten days before the effective date of the contract.

8. Updated contracting information has been given to all contract analysts either in person (Headquarters) or by e-mail (Developmental Centers and Community Facilities) instructing them to read AO 06-05.1 and to include the required language regarding effective start dates when preparing the STD 213 and STD 215.

FINDING 4: Service Provided Before Contract Approved (Repeat)

Recommendation:

CMU should continue to monitor and ensure that all contract managers are aware of their responsibilities and clearly understand that services cannot be provided prior to the contracts being approved.

Response to Finding 4

All contract analysts are trained to educate contract managers and program staff that no work on the contract may start until the contract has been signed by both parties and approved by DGS, if required, and the contractor has received a copy of the formally approved contract. The language stating that no work can start until a contract has

been formally approved is part of DGS' model language for RFPs and IFBs and is included by DDS in the General Terms and Conditions for the contracts.

Updated contracting information has been give to all contract analysts either in person (Headquarters) or by e-mail (Developmental Centers and Community Facilities) instructing them to continue educating the contract managers/program staff and contractors that no work may start until the contract is formally approved, unless it is an emergency situation. Whenever an emergency contract is issued, the contracting staff at the Developmental Centers and Community Facilities notifies CMU as soon as possible.

In the case of the two contracts in question, one involved a health and safety issue (need to provide clean clothing and linens for the residents of a community facility) and the second an investigation of a personnel issue.

Please contact me if you need any additional information.



Pam Robison, Acting Chief/Contracts Manager
Customer Support Section